APPENDIX A

"After having enjoyed the benefit of the reduced interest rates for more than seven years, the City now asserts that the deferred interest coupons, and the provisions for their payment, either in whole or in part, are invalid, and that it is not obligated to pay any part of the deferred interest. This position should not be sustained. The contract was undoubtedly made in good faith, and the parties to it must have thought it was wise and beneficial, otherwise it would not have been entered into. Its legal effect was merely to provide that instead of paying 6% interest each year, the City should pay the lesser rates from January 1, 1934 to January 1, 1944, and that the difference should be paid at the maturity of the bonds now outstanding, unless the latter should be called for redemption on or before January 1, 1944, in which event only one-half of the difference should be paid, or should they be called for redemption after that day, but on or before January 1, 1954, only three-fourths of the difference should be paid.

The State is not aware of any constitutional provision or statute which prohibited the making of that contract. To the contrary, the case of *State* vs. *Sarasota County*, 118 Fla. 629, 159 So. 797, indicates that the contract is valid.

Argument of Fifth Question

If the redemption provisions requiring the payment of the deferred interest coupons, in whole or in part, are invalid, they are not severable from the other redemption provisions in the outstanding bonds, and the latter cannot be called for redemption in advance of their maturity.

The provisions concerning the manner in which the outstanding bonds may be called for redemption, are entire and indivisible. To call them for redemption on or before January 1, 1944, three things must be done: 1) the prin-

cipal must be paid; 2) accrued interest to the redemption date must be paid; 3) one-half of the deferred interest must be paid. The performance of each of these conditions is dependent on the performance of the other two. It is certain that the parties to the contract evidenced by the outstanding bonds, did not intend that the third condition should be breached at the time of performance of the first and second.

As previously pointed out, the position of the State is that the provisions for the payment of the deferred interest are valid. However, if they are invalid, they nevertheless constitute an integral part of the provisions for calling the outstanding bonds for redemption—that is, they constitute one of three conditions subsequent which must be performed to bring about a valid call for redemption. If any one of the three conditions subsequent is invalid, the other two must fall with it, thereby invalidating all of the provisions purporting to authorize the calling for redemption of the outstanding bonds. In this situation, there is no method or means whereby they may be called for redemption in advance of their maturity.

It follows that if the provisions for the payment of the deferred interest, in whole or in part, are invalid, the outstanding bonds have not been and cannot be validly called for redemption, and therefore that the issuance of the proposed refunding bonds for the purpose of calling the outstanding bonds, is unauthorized and illegal."

APPENDIX B

"Argument of Fourth Question

The validity of the deferred interest coupons appurtenant to the bonds proposed to be refunded.

Argument of this question is unnecessary. I feel confident that this Court will follow its most recent decisions on this point, namely:

Outman vs. *Cone,* 141 Fla. 196, 192 So. 611
Taylor vs. *Williams,* 142 Fla. 402, 195 So. 175
State vs. *Special Tax School District No. 3,* 143 Fla. 557, 197 So. 127.
Andrews vs. *City of Winter Haven,* (Fla.) Opinion Filed September 13, 1941, not yet reported

Argument of Fifth Question

The provisions for the payment of the deferred interest coupons, in whole or in part, are severable from the other redemption provisions in the outstanding bonds, and the latter can be called for redemption in advance of their maturity.

This point was directly presented and expressly decided by this Court in *Andrews* vs. *City of Winter Haven,* supra. It was there held that similar deferred interest coupons were unauthorized and void, but that the provisions for their payment, either in whole or in part, were severable from the other provisions for the calling of the outstanding bonds for redemption, and when severed from such other provisions, that the outstanding bonds were callable for redemption, at par plus accrued unpaid interest to the date fixed for redemption, as if the deferred interest coupons had never been annexed thereto.

In the instant case, the resolution authorizing the issuance of the proposed refunding bonds is directly founded on,

and strictly adheres, in all respects, to the procedure approved in the cited case. The latter is full and complete authority by this Court for calling the outstanding bonds for redemption on January 1, 1942, at par plus accrued unpaid interest to that date, and establishes, beyond all shadow of doubt, that the City has validly called the outstanding bonds for redemption on January 1, 1942."

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